

BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF

NOOKSACK INDIAN TRIBE
NOOKSACK'S NORTHWOOD
CROSSING CASINO
9750 NORTHWOOD ROAD
LYNDEN, WA 98264

LICENSE APPLICANT

License No. 400779

LCB NO. 22751

FINAL ORDER OF THE BOARD
APPROVING APPLICATION FOR
SPIRITS/BEER/WINE
RESTAURANT
LOUNGE LICENSE

The above entitled matter is before the Board pursuant to RCW 66.24.010 for consideration of the Nooksack Indian Tribe's application for a new spirits/beer/wine restaurant lounge license for Nooksack's Northwood Crossing Casino, License No. 400779, and it appearing:

1. That Liquor Control Board licensing staff received the Nooksack Indian Tribe's application for a spirits/beer/wine restaurant lounge license for Nooksack's Northwood Crossing Casino (Northwood Crossing) on September 15, 2006.

2. That the license application is for a facility, Nooksack's Northwood Crossing Casino, which is located on tribal trust land. Whatcom County surrounds and abuts the tribal trust land upon which the Northwood Crossing Casino is sited. Pursuant to RCW 66.24.010 (8) (a) the Board licensing staff notified Whatcom County of the receipt of the license application on September 19, 2006.

3. That the Whatcom County Sheriff's Office and the Whatcom County Executive's Office timely submitted detailed written objections to the license application citing numerous bases for objection, including:

- concern that the area surrounding the tribal trust land where the proposed licensed premises would be located is zoned rural and agricultural and is not zoned to allow establishments to serve alcoholic beverages;
- concern that the county roadways leading to and from the proposed licensed premises are rural, with little illumination and are not designed for the higher traffic volumes the Northwood Crossing Casino might bring;
- concern that casinos serving alcoholic beverages are, statewide, most often among the premises drivers arrested for driving under the influence identify as the last place at which they drank prior to being arrested;
- concern that the Whatcom County sheriff's office lacks adequate resources to patrol the adjoining roadways and the anticipated increased attention devoted to the casino would challenge the sheriff's ability to provide adequate patrols and emergency responses elsewhere.

4. That the Liquor Control Board's Licensing staff also received letters of protest from:

- 42nd District State Representative Doug Erickson;
- Whatcom County Councilmember Barbara Brenner;
- City of Lynden Mayor Jack Louws;
- Lynden Chief of Police Jack Foster;
- Members of the Lynden School District Board of Directors;
- Lynden Christian School;
- Cornerstone Christian School;
- Lynden Protestant Reformed Church.

The common theme of the protest from schools, churches and public officials is similar to that of the Whatcom County officials: concern with the rural residential and agricultural character of the adjacent lands, concern with casinos being among establishments most often cited as the last place where a drunk driver consumed alcohol prior to being arrested, concern with casino related vehicle traffic in light of the rural character of the roadways leading to and from the casino and the lack of illumination on those roads and concern over the possibility of increased strain on local law enforcement resources.

5. That the Liquor Board's Licensing Staff received numerous forms of citizen protest, including:

- A protest petition containing 1,968 signatures. 634 of those signatures were from residents of the City of Lynden, the remainder from citizens from other areas including some from outside the State of Washington
- Protest letters from 121 citizens residing in the City of Lynden
- Protest letters from 68 citizens residing outside the City of Lynden
- Copies of 46 letters, 41 of which were from residents of the City of Lynden, sent to the Office of the Attorney General and copies of responses sent on behalf of the Attorney General.

The common theme of the citizen protest is similar to the concerns raised by Whatcom County officials and by the schools churches and public officials – concern regarding the perceived impacts of casino related traffic on local roadways, infrastructure and resources, particularly if the casino were to serve alcohol.

6. That the Liquor Board Licensing staff received four letters of citizen support for liquor licensure. One of the citizens writing in support lives in the City of Lynden, the others do not.

7. That the Liquor Control Board Licensing staff received a response from the Nooksack Tribe to the issues raised by the letters of protest submitted by the Whatcom County Executive and the Whatcom County Sheriff (as noted above, the additional protests received by the Liquor Control Board raise essentially the same concerns as identified by the Whatcom County Executive and Sheriff). The Tribe stated its commitment to working with local jurisdictions to minimize any effects the casino might have on traffic and public safety issues. In addition, the Nooksack response addressed each of the issues raised by Whatcom County as follows:

- Zoning of casino property and surrounding areas to allow establishments that serve alcohol. The Tribe noted the casino site itself is tribal trust land, not subject to local zoning laws, but subject to zoning laws imposed by the Tribe. The Tribe has zoned the area suitable for a casino. The Tribe noted its opinion that zoning status of surrounding properties has not been an impediment to granting other liquor license applications in Whatcom County.
- Traffic impacts on surrounding roadways. The Tribe provided traffic studies performed by an independent third party as part of an environmental assessment of the area in anticipation of the casino project. Those studies determined that even with the expected casino related traffic the relevant roadways would operate at less than 50% of their capacities. The Tribe offered to work with the County to address additional measures such as widening the roads, reducing the speed limits and installing additional lighting. The tribe further noted its intention to employ marketing materials and signage to encourage the casino related traffic toward Northwood Road, a straight, two lane road with a 50 mph speed limit that goes directly to the casino entrance.

- Instances of drunk driving originating from casinos. The Tribe stated it will not tolerate driving under the influence of alcohol and pointed to specific practices and policies it has in place to govern alcohol service at its existing facility. The practices include: staff training beyond the level mandated by the state; a policy of no complementary drinks and no discounted drinks and “cut off” of apparently affected patrons; patrons who are cut off are dissuaded from driving and informed that if they do attempt to drive, local law enforcement will be notified; strict identification checks to avoid service to minors and suspending employment of servers who allow service to minors. The Tribe further offered to train additional staff and offer further training if requested by the Liquor Board. The Tribe also provided an analysis of the documentation relied on to suggest drunk drivers most often originate from casinos. The Tribe’s analysis showed casinos are not the most often cited place where DUI offenders had been drinking prior to arrest, and showed that of those arrested for DUI who provided the name of the establishment where they last drank, only four identified the Nooksack’s other casino facility. The Tribe believes these statistics show the Tribe is vigilant in its approach to overservice issues.
- Impact on local law enforcement resources. The Tribe provided statistics to show the Nooksack’s existing facility generated calls to the Whatcom County Sheriff at the rate of less than once a month and that many of the incidents where calls were made were not of an emergency nature and not related to alcohol service. The Tribe also noted that federal law gives the Tribe jurisdiction over non-Indians on the casino premises and that the Tribal law enforcement may, in consultation with the Sheriff’s office, arrest non-Indians. The Tribe further noted the availability of other law enforcement personnel

throughout the area that would be available to assist the Whatcom County Sheriff in patrolling the area for impaired drivers and the Tribe noted its intent to build a Tribal police substation on the casino premises.

- Citizen protest letters. The Tribe pointed out its perception that many of the letters indicated a general opposition to the casino project as a whole, and did not specifically identify issues regarding the liquor license application. The Tribe also pointed out many of the letters appeared to follow a form or template echoing the concerns raised in the protest letters from the Whatcom County Executive and the Whatcom County Sheriff.
- Mitigation with contribution of casino revenues to County. The Tribe asserted it has complied with its agreement to pay 2% of its net win from its existing Nooksack River Casino facility to Whatcom County, for the County to distribute as it prefers. The Tribe further stated it had offered to discuss additional mitigation measures with the County but that the County rejected the offers of discussion.
- Additional offers of mitigation. The Tribe stated its willingness to meet with the County to discuss improvements to the existing road system, increased lighting, the addition of traffic signals and other mitigation in the form of assistance to the Sheriff's Office.

8. That the Whatcom County Sheriff's Office responded to the Tribe's attempts to address the concerns raised by the Sheriff's Office, but did not believe any of the concerns to be resolved and did not appear to accept the Tribe's offer for continuing discussions of offers of mitigation.

9. That the Liquor Control Board's Licensing Staff recommends to the Board that the liquor license application be granted, subject to the Tribe providing a loan/account number on

the loan documents from Marshall Bank First and subject to a final inspection of the premises by a Liquor Enforcement Officer.

10. That the proposed licensed premises are located on tribal trust land, and not located in the governmental jurisdiction of Whatcom County or in the jurisdiction of any other non-tribal government subdivision. No representatives of the Tribe have indicated objection to the proposed license.

11. That the Tribe has offered, and continues to offer, to work with Whatcom County and other surrounding local government subdivisions to mitigate any traffic or public safety impacts the casino might have on the surrounding lands located in non-tribal jurisdictions.

12. That the Board has given due consideration to the written submissions of Whatcom County officials, residents, churches and schools and the other persons or groups submitting objections, and the Board does not find that those submissions, when considered in conjunction with the materials submitted by the Tribe, establish that issuance of the liquor license at the proposed location or to the applicant business will detrimentally impact the safety, health or welfare of the community surrounding the trust land upon which the premises will be located. *See* WAC 314-07-065 (7).

FROM THE FOREGOING THE BOARD ENTERS THE FOLLOWING
CONCLUSIONS:

1. The objections and other materials filed with the Board do not establish sufficient reason for the Board to deny the license.

2. It is an appropriate exercise of the Board's discretion to grant the license applied for. *See* RCW 66.24.010 (2).

THEREFORE, IT IS HEREBY ORDERED that the License Application No. 400779 for a Spirits/Beer/Wine Restaurant Lounge is GRANTED.

Final Order of the Board. Pursuant to RCW 34.05.461 (a) this is a final order of the Board.

Reconsideration by Licensee. Pursuant to RCW 34.05.470, you have ten (10) days from the mailing of this Order to file a petition for reconsideration stating the specific grounds on which relief is requested. No matter will be reconsidered unless it clearly appears from the petition for reconsideration that (a) there is material clerical error in the order or (b) there is specific material error of fact or law. A petition for reconsideration, together with any argument in support thereof, should be filed by mailing or delivering it directly to the Washington State Liquor Control Board, Attn: Kevin McCarroll, 3000 Pacific Avenue Southeast, PO Box 43076, Olympia, WA 98504-3076, with a copy to all other parties of record and their representatives. Filing means actual receipt of the document at the Board's office. RCW 34.05.010(6). A copy shall also be sent to Martha P. Lantz, Assistant Attorney General, 1125 Washington St. SE, P.O. Box 40110, Olympia, WA 98504-0110. A timely petition for reconsideration is deemed to be denied if, within twenty (20) days from the date the petition is filed, the agency does not (a) dispose of the petition or (b) serve the parties with a written notice specifying the date by which it will act on the petition.

Stay of Effectiveness. The filing of a petition for reconsideration does not stay the effectiveness of this Order. The Board has determined not to consider a petition to stay the effectiveness of this Order.

Further Review of Board Order

The licensed premises is not located within the governmental jurisdiction of Whatcom County and no further administrative review is available to Whatcom County under WAC 314-09-015 (a) nor is

Whatcom County an aggrieved party with standing to obtain judicial review of this Order under RCW 34.05.530.

Service. This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19).

DATED at Olympia, Washington this 4th day of May, 2007.

WASHINGTON STATE LIQUOR CONTROL BOARD

Travis Lee
Robert L. Givens
Donna